

IN THE UNITED STATES DISTRICT COURT  
FOR THE NORTHERN DISTRICT OF CALIFORNIA

IN RE: SOCIAL MEDIA ADOLESCENT  
ADDICTION/PERSONAL INJURY PRODUCTS  
LIABILITY LITIGATION

This Document Relates To:

ALL ACTIONS

MDL No. 3047

Case No. 4:22-md-03047-YGR

**JOINT STATEMENT RE:  
DEFENDANTS' REQUESTS FOR  
INSPECTION AND PRODUCTION OF  
FORENSIC IMAGES OF PLAINTIFFS'  
ROUTINE DEVICES**

Judge: Hon. Yvonne Gonzalez Rogers

Magistrate Judge: Hon. Peter H. Kang

Dear Judge Kang:

Plaintiffs and Defendants (hereinafter the "Parties") respectfully submit this Joint Statement regarding their outstanding dispute over Defendants' requests for inspection and production of forensic images of the devices within Plaintiffs' possession, custody and control that were used on a routine basis by the personal injury bellwether Plaintiffs to access Defendants' platforms. Pursuant to this Court's Standing Order for Discovery in Civil Cases and Civil Local Rule 37-1, the Parties attest that they met and conferred telephonically and discussed several proposed compromise positions before filing this Joint Statement.<sup>1</sup> Specifically, they met and conferred on June 5, June 14, June 28, July 9, and July 10, 2024, on the issues that are the subject of this letter. Lead trial counsel for the parties involved in the dispute attended the June 28 conferral. Because all lead counsel were not located in the geographic region of the Northern District of California or otherwise located within 100 miles of each other, they met via videoconference. Lead trial counsel have concluded that no agreement or negotiated resolution can be reached.

The parties will be prepared to address this dispute at the Court's earliest opportunity.

Dated: July 10, 2024

Respectfully submitted,

/s/ Lexi J. Hazam  
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<sup>1</sup> Pursuant to the Court's standing order, the Parties have equally divided 5 single-spaced pages between Defendants and Plaintiffs to address their respective positions. See [https://www.cand.uscourts.gov/wp-content/uploads/judges/kang-phk/PHK-Final-Discovery-Standing-Order-v1.2-2023\\_06\\_01-1.pdf](https://www.cand.uscourts.gov/wp-content/uploads/judges/kang-phk/PHK-Final-Discovery-Standing-Order-v1.2-2023_06_01-1.pdf).

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**ATTESTATION**

I, Andrea R. Pierson, hereby attest, pursuant to N.D. Cal. Civil L.R. 5-1, that the concurrence to the filing of this document has been obtained from each signatory hereto.

Dated: July 10, 2024

/s/Andrea R. Pierson

ANDREA R. PIERSON

**Defendants’ Position:** Plaintiffs contend that their purported “addiction” to Defendants’ platforms—and *only* Defendants’ platforms—caused their alleged injuries. Plaintiffs’ own allegations, however, identify the use of their smartphones and similar devices as both the vehicles for their alleged addiction and potential alternative causes of their alleged injuries. Articles cited in the Master Complaint refer to smartphones as “the slot machine in their pocket”<sup>2</sup> and highlight how their features—such as texting, emailing, gaming, accessing cyber-pornography, video chatting, and internet browsing—are potentially addictive and harmful.<sup>3</sup> Countless non-Defendant applications were potentially accessed by Plaintiffs using these devices and share some of the same features Plaintiffs allege caused their addiction and harm (e.g., nighttime notifications, no screen-time limits, filters). Plaintiffs have identified the devices they “used on a routine basis” to access Defendants’ platforms (“Devices”), *see* PFS § XIII.A.1—these Devices contain unique data, files, and usage information that Defendants need to test Plaintiffs’ theory and support their defenses.

To obtain this information, Defendants served requests to inspect the Devices routinely used by and in the possession, custody, or control of the personal injury bellwether Plaintiffs (“Plaintiffs”), or for forensic images of those Devices. *See* Defs’ Second RFPs 1-2 (**Ex. 1**). Defendants proposed a protocol, modeled after one approved by Judge Gonzalez Rogers in *eHealthinsurance Svcs., Inc. v. Healthpilot Techs. LLC*, 2021 WL 3052918 (N.D. Cal. July 20, 2021) that balances the parties’ respective rights of inspection and privacy. *See* Proposed Protocol (**Ex. 2**). Although Plaintiffs are willing to produce certain data from Devices they deem “primary,” they refuse to produce data from all the Devices they routinely used, and, worse, demand that Defendants first identify specific data sources within the “primary” Devices and agree to search terms—a proposal that would shield critical information from discovery and lead to delay. Defendants’ compelling need to understand Plaintiffs’ Device usage outweighs Plaintiffs’ privacy concerns, which are mitigated by the Proposed Protocol and Protective Order. The Court should order that the Plaintiffs’ Devices be imaged and produced for Defendants’ review and inspection.

Legal standard. When a requesting party’s compelling interest in a device image outweighs the other party’s privacy concerns and there is no alternative way to obtain the information sought, a court may order production of forensic images of a party’s devices. In determining whether a compelling interest exists, courts consider whether plaintiffs “actively put their devices at issue when they chose to sue,” because “a plaintiff cannot bring suit and then limit the defendant’s discovery that is targeted at the subject matter of the plaintiff’s claims.” *In re Apple Inc. Device Performance Litig.*, 2019 WL 3973752, at \*1 (N.D. Cal. Aug. 2, 2019) (affirming production of forensic images); *see also* Fed. R. Civ. P. 34(a)(2) & advisory committee’s note to 2006 amendment; *In re Abilify Prods. Liab. Litig.*, 2017 WL 9249652 (N.D. Fla. Dec. 7, 2017) (ordering plaintiffs alleging drug-induced gambling addiction to produce devices for forensic imaging).<sup>4</sup>

Defendants have a compelling interest in accessing Plaintiffs’ Devices. Defendants have a right to test Plaintiffs’ claim that their alleged addiction to Defendants’ platforms—which Plaintiffs admittedly accessed with their Devices—are a cause, or the sole cause, of their claimed

<sup>2</sup> SAC ¶¶ 63 (fn 26-27), 84 (fn 51) (citations omitted).

<sup>3</sup> SAC ¶¶ 16-18, 63, 84, 92-94 (fn 71-76), 100 (fn 86), 118-119 (fn 113-115), 121 (fn 117-118), 122, 133, 216 (fn 257), 450 (fn 600), 555 (fn 671), 703 (fn 770-771), 754 (fn 813).

<sup>4</sup> Plaintiffs’ cited cases, including *Jones* and *Henson*, are inapposite because they did not involve allegations, like Plaintiffs’ here, that put the entirety of plaintiffs’ device usage squarely at issue.

injuries. *See Benson v. Saban Cmty. Clinic*, 2023 U.S. Dist. LEXIS 166739, at \*7 (C.D. Cal. Sept. 18, 2023) (“[W]hen a Plaintiff seeks damages for emotional distress, discovery into potential alternative causes of emotional distress is permissible.”). Plaintiffs’ Devices are the most critical data source in their possession, and they have affirmatively put their Device usage at issue. Defendants are thus entitled to access all information on the Devices not logged by Plaintiffs pursuant to the Protocol to see how the Devices were used and to show whether Plaintiffs’ use of other features or applications on the Devices may have caused their injuries.

Forensic imaging is the only feasible way to obtain critical discovery. A forensic image is the only way to obtain a comprehensive view of how Plaintiffs used their Devices, including the features and services on them, because data and data sources vary, depending on the device and operating system. Forensic imaging will capture system logs that contain information concerning when applications, webpages, games, and other content were opened and closed. It will capture application-specific history files, which can provide insight into the historic use of platforms, including deleted platforms. And it will include data on posts, comments, likes, and internet browsing history—all necessary to challenge Plaintiffs’ platform-specific theory.

By way of example, Plaintiffs allege that “notifications” from Defendants’ platforms, especially at night, cause the addictive behavior and injuries they claim. *See* SAC ¶¶ 3, 103. Forensic imaging would show how Plaintiffs interacted with notifications and whether they were received simultaneously with Plaintiffs’ use of other platforms and device features. Notifications are addressed differently by different devices, operating systems, and applications. Some may be reflected in system data while others are app-specific. Further, device-specific settings dictate whether and how frequently a plaintiff receives notifications from Defendants’ platforms. Without a complete forensic image, Defendants cannot know how a Plaintiff interacted with notifications.

Forensic imaging is also necessary to understand how Plaintiffs used device-specific features and controls, and other non-Defendant applications. While Plaintiffs admit using other apps—including other social media, video game and streaming services—they have not disclosed the apps they used or the extent of their usage. Only forensic images can provide a comprehensive and accurate picture, including access to deleted application and account information.

Plaintiffs’ proposal would deprive Defendants of critical discovery. Plaintiffs’ proposal—which only offers to produce information from a single “primary” Device and requires Defendants to identify data sources and search terms without visibility into the many ways in which Plaintiffs used it—would prevent access to critical discovery. Plaintiffs should be required to produce an image from each Device routinely used to access Defendants’ platforms (and other apps)—not just one they label as “primary.” Further, because Defendants lack access to the Devices, they have no way to determine what information exists. Providing Plaintiffs with a list of potential applications, files, and data sources would be a guessing game, in part because each Device and image is unique, with numerous potential user settings, applications, and customizations for each Device.

Further, Plaintiffs’ proposal to use search terms and narrow data sources, and to produce only what Plaintiffs deem relevant is insufficient because: (1) Defendants cannot predict each potential alternative cause that might be implicated on a Device, let alone capture that discovery, without examining the Device, by search terms or identification of databases; (2) search terms will not capture usage and performance data, patterns of usage and storage metrics over time, or even

all relevant communications or files on the Devices, such as images, memes, or slang or colloquial language;<sup>5</sup> (3) requiring Defendants to identify search terms/databases would unnecessarily reveal attorney work product; and (4) protracted back-and-forth discussions over search terms and data sources would be inefficient, delay depositions, and jeopardize the Court's scheduling order.

Defendants' Proposed Protocol mitigates potential privacy concerns. Defendants' Proposed Protocol contemplates that (a) a neutral third-party vendor will generate forensic images of designated Devices using industry standard tools; (b) chain of custody will be documented; (c) the vendor will retain the Devices only long enough to confirm image integrity; and (d) images will be produced under the Protective Order. To ensure privilege/privacy protections, the Protocol allows Plaintiffs to identify, log, and withhold privileged or CSAM information. Defendants have offered that Plaintiffs can withhold non-responsive text messages or emails, as well as contact lists, passwords, and payment information. Defendants have even offered to consider additional reasonable protections, but Plaintiffs outright rejected the proposal. Defendants remain willing to confer with Plaintiffs on scope limitations and are not seeking to discover the entire contents of the Device to the extent that information constitutes CSAM or is subject to any other applicable protection or immunity from discovery. Regardless, considering the protections afforded by the Proposed Protocol and existing Protective Order, any remaining privacy concerns are far outweighed by Defendants' interest in accessing the Devices or Device images as discussed above.

Defendants respectfully request that the Court order Plaintiffs to produce forensic images of all the Plaintiffs' designated Devices consistent with Defendants' Proposed Protocol.

### **Plaintiffs' Position:**

Defendants' request for wholesale production of Plaintiffs' devices is overbroad and not proportional to the needs of this case. This Court has held that "[t]urning over the entirety of the cell phone's contents would be too broad and potentially include irrelevant information." *Jones v. Sunbelt Rentals, Inc.*, 2023 WL 10691302, at \*9 (N.D. Cal. Nov. 16, 2023) (Kang, J.). The same is true here. Defendants seek the entire contents<sup>6</sup>—including internet browser histories, metadata, etc.—of Plaintiff's devices. Plaintiffs, in contrast, propose an appropriately tailored approach that would extract the relevant information. Specifically, Plaintiffs have or will perform a full-file forensic image (mirror image) of all BW Plaintiffs' primary device(s) that are in Plaintiffs' possession, from which they will produce relevant device and application usage data and files showing the frequency, length, and timing of their use across relevant applications, including Defendants' Platforms.<sup>7</sup> Such a targeted production is not only feasible, but it is also the usual and customary approach. Indeed, *In re Abilify Prods. Liab. Litig.*, a case cited by Defendants, confirms that wholesale collection is the exception—one that requires a showing of malfeasance or misfeasance by the non-moving party. *See* 2017 WL 9249652 \*2 (N.D. Fla. Dec. 7, 2017) (ordering forensic examination because of non-moving party's "oversight, failure or inability to

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<sup>5</sup> Plaintiffs acknowledge that search terms are not appropriate for certain data, but the scope of that data remains unclear and may involve protracted disputes.

<sup>6</sup> Subject to a narrow exception for privileged information and a small subset of other information.

<sup>7</sup> Plaintiffs have also offered to meet with the Parties' respective ESI vendors to discuss what data could be produced and the format of those productions, which Defendants have declined.

produce this information”). Defendants’ other case, *In re Apple Inc. Device Performance Litig.*, is inapposite. There, the plaintiffs’ claims that Apple’s iOS updates intentionally sabotaged device performance put the performance of the device squarely at issue. 2019 WL 3973752, at \*1 (N.D. Cal. Aug. 2, 2019).

Moreover, Defendants admit to modelling their proposed inspection protocol on wholly inapposite protocol entered in *eHealthinsurance*, which governed the inspection of devices for allegedly stolen trade secrets. There, the court entered a forensic inspection protocol pursuant to a preliminary injunction against the defendants after at least one defendant admitted to sharing the plaintiff’s confidential information in violation of trade secret laws and contractual obligations. *eHealthinsurance*, 2021 WL 3052918, at \*\*1–3. The injunction required the defendants to make available devices containing electronic copies of confidential trade secrets and other proprietary information, and the forensic protocol governed the manner in which the plaintiff could “verify if the [defendants were] in possession, custody, or control of [the plaintiff’s] Confidential Information,” and “determine whether and how such information may have been copied, altered, used, or deleted.” *Id.* at \*3. Here, Plaintiffs are not trade secret thieves and there is no basis to treat them as such.

Defendants’ proposed protocol would serve only to increase costs and delay. Under the agreed-upon ESI Protocol, Plaintiffs have already spent over \$2M on industry-leading ESI and forensics across the JCCP and MDL to preserve and produce Plaintiffs’ relevant ESI.<sup>8</sup> Defendants’ proposal is also misleading, insofar as it implies that Plaintiffs will have the ability to review the contents of the device image for relevance before production, but Plaintiffs learned through the meet and confer process that Defendants’ protocol allows for no such review.

In addition to being grossly overbroad, Defendants’ demand “implicate[s] significant privacy concerns” with no legitimate countervailing benefit. *See, e.g., Henson v. Turn, Inc.*, 2018 WL 5281629, at \*7 (N.D. Cal. Oct. 22, 2018) (denying defendant’s request for complete forensic images of plaintiffs’ devices, finding that that privacy interests were an appropriate part of the Rule 26(b)(1) proportionality analysis).<sup>9</sup> Given the intrusiveness of forensic examinations, courts are careful to safeguard privacy interests and generally require that there be evidence of misconduct involving electronically stored information from the non-moving party, and that discovery of the entire device not yield substantial irrelevant and personal information. *See, e.g., Jones*, 2023 WL 10691302, at \*9.<sup>10</sup> No such misconduct has occurred here. Defendants have failed

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<sup>8</sup> This amount does not include school district Plaintiffs.

<sup>9</sup> *See also John B. v. Goetz*, 531 F.3d 448, 460 (6th Cir. 2008) (overruling forensic imaging orders because it failed to “account properly for [] significant privacy concerns”); *In re Anthem, Inc. Data Breach Litig.*, No. 15-md-02617 LHK (NC), 2016 WL 11505231, at \*1 (N.D. Cal. Apr. 8, 2016) (finding “burden of providing access to each plaintiff’s computer system greatly outweighs its likely benefit”); *In re 3M Combat Arms Earplugs Prods. Liab. Litig.*, No. 3:19-md-2885, 2020 WL 6140469, at \*3–5 (N.D. Fla. Oct. 15, 2020) (similar); *Hardy v. UPS Ground Freight, Inc.*, No. 3:17-cv-30162-MGM, 2019 WL 3290346, at \*2 (D. Mass. July 22, 2019) (similar).

<sup>10</sup> *See also Citizens Bus. Bank v. Mission Bank*, 5:22-CV-01473, 2024 U.S. Dist. LEXIS 47697, at \*10 (C.D. Cal. 2024) (requiring evidence of misconduct, concealment, or destruction of evidence); *Moser v. Americor Funding, LLC*, No. 4:23-CV-10008, 2023 U.S. Dist. LEXIS 172260 at \*1 (S.D.

to even articulate what, if anything, they believe would be missing or deficient in what Plaintiffs have offered to produce; mere skepticism “is not sufficient to warrant drastic electronic discovery measures.” *Moser*, 2018 U.S. Dist. LEXIS 215901, at \*16 (S.D. Cal. 2018) (citing *John B. v. Goetz*, 531 F.3d 448, 460 (6th Cir. 2008); see *Juul Labs, Inc. v. Chou*, 2022 U.S. Dist. LEXIS 100833, at \*4 (C.D. Cal. 2022) (stating that, “[t]hough the Ninth Circuit has not articulated a standard for ordering a forensic examination, district courts across the country have consistently held that ‘mere suspicion or speculation that an opposing party may be withholding discoverable information is insufficient to support’ such an intrusive examination.”)).

Defendants’ request for all “routine” devices is overbroad and unreasonable. In response to the Plaintiff Fact Sheet, Plaintiffs checked pre-filled boxes to indicate what device they “used on a routine basis to access Defendants’ platforms.” See PFS, at § XIII.A.1. The PFS, however, did not define the phrase “routine basis” and the available options to check included devices that are not in Plaintiffs’ possession, custody, or control (e.g., parents or guardian’s phone, friend or sibling’s phone). See *Genomics v. Song*, No. 21-CV-04507-JST (LJC), 2024 WL 2044627, at \*6 (N.D. Cal. May 7, 2024), *motion for relief from judgment denied sub nom. BLUESTAR GENOMICS, Plaintiff, v. CHUNXIAO SONG, et al., Defendants.*, No. 21-CV-04507-JST, 2024 WL 3279511 (N.D. Cal. June 5, 2024) (Cisneros, J.) (confirming possession, custody, or control is defined in the Ninth Circuit as actual possession or “legal right to obtain the documents on demand”).

As a compromise, Plaintiffs agreed to forensically image Plaintiffs’ primary device, defined as a device that: (1) is the Plaintiff’s personal device; (2) is not anyone else’s personal device or a family device; (3) has been the main device on which the Plaintiff accessed any social media platform during the relevant time period; and (4) is in the Plaintiff’s possession custody or control. Plaintiffs’ proposal strikes a reasonable balance between capturing relevant data proportional to needs of this case and protecting the privacy interests of non-parties.

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Fl. 2023) (similar); *Johns v. Chemtech Services Inc.*, 2021 WL 4498651, at \*1 (N.D. Ill. 2021) (similar).

# EXHIBIT 1



[Counsel Listed on Signature Pages]

UNITED STATES DISTRICT COURT  
NORTHERN DISTRICT OF CALIFORNIA

IN RE: SOCIAL MEDIA ADOLESCENT  
ADDICTION/PERSONAL INJURY  
PRODUCTS LIABILITY LITIGATION,

Case No.4:22-MD-03047-YGR

MDL No. 3047

THIS DOCUMENT RELATES TO:

**DEFENDANTS' SECOND REQUESTS  
FOR PRODUCTION TO PLAINTIFF  
DYMAND MCNEAL.**

Dymand McNeal

Member Case No.: 4:23-cv-01092

PROPOUNDING PARTY: Defendants listed below

RESPONDING PARTY: Plaintiff Dymand McNeal

SET: 2

DATE OF SERVICE: May 22, 2024



**DEFENDANTS' SECOND REQUESTS FOR PRODUCTION TO  
PLAINTIFF DYMAND McNEAL**

Defendants, TikTok Inc., ByteDance Inc., ByteDance Ltd., TikTok Ltd., TikTok, LLC, Meta Platforms, Inc., Instagram, LLC, Facebook Payments, Inc., Siculus, Inc., and Facebook Operations, LLC, pursuant to Rule 34 of the Federal Rules of Civil Procedure, hereby serve the following Second Set of Requests for Production to Plaintiff Dymand McNeal ("Plaintiff"). These Requests are continuing, and Plaintiff is required to seasonably supplement their responses.

**DEFINITIONS**

The following definitions, which have been included in alphabetical order for ease of reference, apply to each of the following instructions, and requests for production and inspection:

1. The term DEFENDANT or DEFENDANTS means any of the parties against whom YOU have brought a claim in YOUR COMPLAINT.

2. The term "DEVICE" or "DEVICES" means each and every smartphone, tablet, video game console, computer, laptop computer, desktop computer, server, and any and all similar tangible object, device, or box that includes an operating system that can hold, store, receive, and transmit data used by YOU during the RELEVANT TIME PERIOD to access any social media platforms, specifically including any DEVICE you identified in response to Plaintiff Fact Sheet Section XIII.A.1.

3. The term "DEVICE CLONE" or DEVICE IMAGE includes the plural and means a digital duplicate (including for example, iCloud backup, Google One backup, or local DEVICE backup or copy) of any DEVICE.

4. The term "DOCUMENTS" refers to each and every writing or record, however produced or reproduced, whether draft or final, original or reproduction, paper or electronic, signed or unsigned, that is in YOUR possession, custody, or control or to which YOU otherwise have access, regardless of where located (e.g. paper, DEVICE, thumb drive, external flash drive, compact disk, computer disk and drive, etc.), INCLUDING any communication (INCLUDING all

1 forms of information transference written, oral or electronic, INCLUDING meetings, conferences,  
2 conversations, discussions, proposals, solicitations, interviews, correspondence, messages, and  
3 notes, as well as memoranda and records of communications), correspondence, emails, electronic  
4 information, data, letters, cellphone data, screenshots, screen time data or information, location  
5 information, search histories, journals, photographs, tape recordings, video recordings, movies,  
6 other data compilations from which information can be obtained, all materials similar to any of the  
7 foregoing, and all other DOCUMENTS and things subject to production under Rule 34 of the  
8 Federal Rules of Civil Procedure. All copies and versions of any document, which contain any  
9 notation, erasure, obliteration, marking, or writing of any kind different from the original shall be  
10 treated as an original document.

11 5. The terms “INCLUDING” or “INCLUDES” shall be interpreted so as to identify a  
12 non-exhaustive set of examples (i.e., “INCLUDING”) and to expand the meaning or interpretation  
13 of a term or question rather than limit any request to the specified examples.

14 6. The terms “APPLICATION” for purposes of these Requests means any websites  
15 and/or applications that enable users to create, share and view content, participate in social  
16 networking, or send and/or receive messages and/or interact with one another in any form (e.g.,  
17 text, images, audio, videos, etc.). This INCLUDES but is not limited to Facebook, Instagram,  
18 Snapchat, TikTok, YouTube, YouTube Kids, Band, Discord, Facebook Facetime, FamilyApp,  
19 GameChanger, Google Chat, Google Messages, GroupMe, Heja, iMessage, Kik, LINE, Microsoft  
20 Teams, Oovoo, Pinterest, Reddit, Signal, Slack, Sportlyzer, SportsEngine, sportsYou, StackSports,  
21 Teamer, TeamsReach, TeamApp, TeamSnap Telegram, Threads, Tumblr, Viber, WeChat, X  
22 (formerly known as Twitter), Yik Yak, and Zoom.

23 7. “RELATING TO” shall refer to constituting, comprising, concerning, containing,  
24 reflecting, setting forth, showing, disclosing, describing, explaining, summarizing, referring to,  
25 supporting, contradicting, proving, disproving, or tending to prove or disprove, directly or  
26 indirectly, in whole or in part, and should be given the broadest possible scope consistent with the  
27 discovery rules contained in the Federal Rules of Civil Procedure. These terms should be  
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1 construed to apply not only to the events to which they refer directly, but also to all meetings,  
2 discussions, contacts, and other communications concerning those events, either with or between  
3 YOU and third persons.

4 8. The term “RELEVANT TIME PERIOD” refers to the period from the time you  
5 turned seven (7) years old to April 1, 2024.

6 9. The terms “YOU,” “YOUR,” “YOURSELF,” and “PLAINTIFF” refer to the  
7 answering named Plaintiff unless this LAWSUIT was filed on behalf of a minor or decedent, in  
8 which case “YOU,” “YOUR,” “YOURSELF,” and “PLAINTIFF” shall refer to such minor or  
9 decedent.

10 10. In these requests, whether or not these defined words are capitalized, the singular  
11 shall include the plural, and the plural shall include the singular; “AND” shall include “OR” and  
12 “OR” shall include “AND;” “ANY” shall include “ALL” and “ALL” shall include “ANY.”

### 13 INSTRUCTIONS

14 A. If YOU object to or otherwise decline to comply with any portion of any request,  
15 YOU shall provide all information requested by that portion of the request to which YOU do not  
16 object or with which YOU do not decline to comply. If YOU object to a request on the ground  
17 that the request is too broad, YOU shall provide all information that YOU concede is relevant or  
18 calculated to lead to the discovery of admissible evidence. If YOU object to a request on the  
19 ground that to provide the requested discovery would constitute an undue burden, YOU shall  
20 provide all requested discovery that can be supplied without undertaking what YOU claim is an  
21 undue burden. Defendants hereby agree that any such partial production AND answer shall not be  
22 deemed to be a waiver of YOUR objection to the parts of the request to which answers have not  
23 been made. As to those portions of any request to which YOU object or with which YOU decline  
24 to comply, YOU shall state the reason or reasons for YOUR objection or declination.

25 B. Each DOCUMENT and thing produced in response to the following request for  
26 production shall be marked and organized so as to relate the DOCUMENT or thing to the request  
27 or requests that seek it.  
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1 C. Each request extends to all DEVICES or DEVICE CLONES and all DOCUMENTS  
2 in YOUR possession, custody, or control, or the possession, custody, or control of anyone acting  
3 on YOUR behalf.

4 **REQUESTS FOR PRODUCTION**

5 Pursuant to Rule 34 of the Federal Rules of Civil Procedure, Defendants request that YOU  
6 produce or produce for inspection the items requested below to counsel for Defendants listed  
7 below at Faegre Drinker LLP, 300 N. Meridian Street, Suite 2500, Indianapolis, IN 46204, within  
8 thirty (30) days of service of these Requests.

- 9 1. All DEVICE CLONES, DEVICE IMAGES, or backups for YOUR DEVICES created at  
10 any time within the Relevant Time Period. Please provide any login credentials necessary  
11 to access and copy this electronic information or data. In the event this DEVICE backup is  
12 not retained locally, please execute the accompanying Cloud Storage Access Authorization.
- 13 2. All DEVICES, INCLUDING all DEVICES that are no longer used but are in YOUR  
14 possession and control. In the event YOU want to retain YOUR DEVICES, Counsel will  
15 make arrangements to have a neutral third party make and retain a DEVICE CLONE to  
16 preserve the evidence that remains on YOUR DEVICES and return the DEVICES to YOU  
17 thereafter. Please provide any login credentials necessary to permit a neutral third party to  
18 access and copy this electronic information or data. Please execute the accompanying  
19 Device Access Authorization.
- 20 3. All DOCUMENTS, electronic information, or data RELATING TO the usage of YOUR  
21 DEVICE and all APPLICATIONS used therewith, whether stored locally or remotely,  
22 INCLUDING any and all electronic information, DEVICE IMAGES, or data stored locally  
23 or remotely in the form of a DEVICE backup or in the form of APPLICATION  
24 data. Counsel will make arrangements to have a neutral third party make and retain a copy  
25 of this information to preserve this evidence. Please provide any login credentials necessary  
26 to permit a neutral third party to access and copy this electronic information or data.
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1 4. DOCUMENTS sufficient to show the International Mobile Equipment Identity (IMEI)  
2 number, the Mobile Equipment Identifier (MEID) number, and the Media Access Control  
3 (“MAC”) address for any and all DEVICES YOU used to access Defendant’s Platforms, as  
4 specified in response to Plaintiff Fact Sheet Section XIII.A.1, including any and all private  
5 MAC addresses used.  
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Respectfully submitted,

Dated: May 22, 2024

By: /s/ Andrea R. Pierson

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f/k/a Facebook, Inc.; Instagram, LLC;  
Facebook Payments, Inc.; Facebook  
Operations, LLC; and Siculus, Inc.*

**CERTIFICATE OF SERVICE**

I certify that on May 22, 2024, a true and correct copy of Defendants' Second Requests for Production to Plaintiff Dymand McNeal were served upon the following by email:

Emanuella J. Paulos  
Levin, Papantonio, Rafferty, Proctor, Buchanan  
316 South Baylen Street, Suite 600  
Pensacola, Florida 32502  
Phone: (850) 435-7061  
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*Attorney for Plaintiff*

By: /s/ Andrea R. Pierson  
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*Attorney for Defendants TikTok Inc., ByteDance Inc., ByteDance Ltd., TikTok Ltd., and TikTok, LLC*

# **EXHIBIT 2**



1 *[Submitting Counsel on Signature Page]*  
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8 UNITED STATES DISTRICT COURT  
9 NORTHERN DISTRICT OF CALIFORNIA  
10

11 IN RE: SOCIAL MEDIA ADOLESCENT  
12 ADDICTION/PERSONAL INJURY  
13 PRODUCTS LIABILITY LITIGATION  
14

MDL No. 3047

Case No. 4:22-MD-03047-YGR

**[PROPOSED] FORENSIC INSPECTION  
PROTOCOL**

15 This Document Relates to:  
16 ALL ACTIONS  
17  
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1 In this litigation, Plaintiffs allege that they have accessed Defendants' Platforms using one  
 2 or more electronic devices. (*See generally* Response to Plaintiff Fact Sheet XIII.A.1.) Those  
 3 devices contain relevant information, including for example, information about Plaintiffs' usage  
 4 of their devices and Plaintiffs' communications concerning their conditions. This evidence is not  
 5 available to Defendants except through an examination of Plaintiffs' devices. In order to preserve  
 6 that evidence, [Defendants propose or the Parties agree] that forensic images or copies of the  
 7 contents of those devices and any backups be made pursuant to the Protocol set forth below, and  
 8 that non-privileged documents responsive to Defendants' discovery be produced by any Plaintiff  
 9 selected as a bellwether Personal Injury Plaintiff.

### 11 **FORENSIC PROTOCOL**

12 For the purposes of evidence preservation, forensic examination, and document  
 13 production, the Court **ORDERS** the Personal Injury Plaintiffs selected as bellwethers to produce  
 14 for inspection and copying all electronic devices used to access Defendants' platforms, see  
 15 generally Plaintiff Fact Sheet XIII.A.1, (collectively "Devices") and any Device backups  
 16 ("Backups") Plaintiffs' may have made, as specified in the following protocol:

- 18 1. Forensic Imaging Firm. The Parties have agreed to use the services of [JOINT  
 19 VENDOR] (the "Third Party Neutral") to oversee this process in accordance with the terms of  
 20 this Protocol ("Protocol").
- 22 2. Privacy Designations. The Parties' Stipulated Second Modified Protective Order  
 23 (Dkt. No. 665) applies to documents, information, and data collected or produced pursuant to this  
 24 Protocol.
- 26 3. Prior Forensic Images/Copies of Devices and Backups. For any and all Personal  
 27 Injury Plaintiffs selected as bellwethers who have already forensically imaged or copied their  
 28 Devices and Backups, Plaintiffs' counsel will provide all such images and copies and any PINs or

1 passwords needed to access same to the Third Party Neutral by [DATE]. Plaintiffs' counsel must  
2 also provide Defendants and the Third Party Neutral with the date on which the forensic imaging  
3 or copying was performed and a description of the tools and methodologies used for forensically  
4 imaging or copying each Device and Backup.

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6 4. Access to Devices and Backups. Counsel for Plaintiffs will provide the Third  
7 Party Neutral with access to each Device, and any PINs or passwords needed to access same by  
8 [DATE] to facilitate the creation of forensic images or copies.

9 5. Forensic Imaging & Chain of Custody.

- 10 a. The Third Party Neutral will image or copy all Devices and Backups in a  
11 forensically-sound manner using industry standard tools agreed upon by the  
12 Parties.  
13  
14 b. The Third Party Neutral will retain access to Devices and Backups for the time  
15 period necessary to create (and perform quality control checks on) forensic  
16 images or copies of the Devices and Backups. Chain of custody over Devices  
17 and Backups will be maintained and documented during the creation of  
18 forensic images or copies. The Third Party Neutral will also maintain and  
19 document chain of custody for the forensic images or copies created.  
20

21 6. Production of Data and Information. Data or information collected from Devices  
22 or Backups will be produced in the following manner:

- 23 a. The Third Party Neutral will send complete forensic images or copies of  
24 Devices and Backups to Plaintiffs' counsel for review. Plaintiffs' counsel will  
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1 review for responsiveness to discovery, for privilege, and for Child Sexual  
2 Abuse Material (“CSAM”),<sup>1</sup> which must not be produced to Defendants.

3 b. Counsel for Plaintiffs must log documents, data, or information withheld for  
4 privilege in accordance with the Privilege Log Protocol (ECF No. 740).

5 c. All responsive documents, data, or information collected from Devices or  
6 Backups by the Third Party Neutral and not withheld for privilege will be  
7 produced to the Parties within 14 days of receipt by Plaintiffs from the Third  
8 Party Neutral.

9 d. Resolution of disputes regarding claims of privilege will be in accordance with  
10 Section H of the Court’s Standing Order for Discovery in Civil Cases and the  
11 Privilege Log Protocol, or any amendments thereto by the Court.

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14 7. End-of-Matter Disposition of Files. The Third Party Neutral will retain forensic  
15 images or copies of a Plaintiff’s Devices and Backups until final resolution of the litigation,  
16 including any appeals.

17 8. Responsibility for Fees. With respect to the tasks and activities described in this  
18 Protocol, Plaintiffs and Defendants will evenly split the cost of the Third Party Neutral’s time and  
19 any costs incurred by the Third Party Neutral.

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28 <sup>1</sup> As used herein, the term “CSAM” refers to child sexual abuse materials, (i.e. any visual  
depiction of sexually explicit conduct involving a person less than 18 years old).

Dated: May \_\_, 2024

**PETER H. KANG**  
**UNITED STATES MAGISTRATE JUDGE**